

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHWEST GAS CORPORATION (U-905-G) for authority to:
(i) issue one or more types of Debt Securities in the principal amount of up to \$415,000,000;
(ii) issue up to 4,000,000 shares of its \$1 par value Common Stock; (iii) refinance previously issued short-term debt securities; (iv) refinance previously authorized securities under the "Evergreening Authority" guidelines; and
(v) enter into one or more interest rate risk management contracts.

Application 04-11-020
(Filed November 18, 2004)

**OPINION AUTHORIZING THE ISSUANCE OF DEBT
AND COMMON STOCK**

Summary

This decision grants Southwest Gas Corporation (Southwest) the authority requested in Application (A.) 04-11-020 (Application).

Southwest requests authority, pursuant to Pub. Util. Code §§ 816 through 830¹ for the following:

1. Obtain debt capital in an aggregate amount not to exceed \$415,000,000 through the direct issuance of one or more types of indebtedness, including, without limitation, debentures, bonds, notes, bank loans, capital leases, private placement, commercial paper programs, extendible commercial notes, bankers' acceptances, and other variable-rate instruments which are or may become

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

available in the capital markets or indirectly through one or more governmental agencies;

2. Determine the precise amount and timing of each debt financing, the market in, and method by, which each is issued, the principal amounts and maturities and, if any, the terms of redemption, repurchase security, other security, subordination and conversion provisions, rights, warrants, and the other terms and provisions and the price and interest rate (which may be fixed, adjustable, variable, or set by auction, remarketing, or other rate setting procedures) of the borrowings and of any securities related thereto or issuable in connection therewith in the manner set forth in the Application;
3. Issue and sell up to 4,000,000 shares of its \$1 par value common stock, in addition to its existing authority, by public or private offering, or through its Benefit Plans;
4. Refinance, refund, or replace its existing short-term debt;
5. Continue its authority to refinance previously authorized securities at maturity, upon mandatory redemption, upon repurchase for mandatory sinking fund requirements, or upon optional refinancing to reduce financing costs under the Commission's "Evergreen Authority" guidelines through December 31, 2009; and
6. Continue its authority to enter into interest rate risk management contracts subject to the restrictions and limitations set forth in Decision (D.) 00-09-009.

Southwest proposes to use the proceeds from the issuance of debt and equity securities for purposes allowed under § 817, including refinancing of \$250 million of long-term debt, liquidation of \$25 million maturing long-term debt, and payment of \$54 million of short-term debt.

In addition, Southwest anticipates evergreening² \$150 million of maturing debts.

Notice of the filing of the Application appeared on the Commission's Daily Calendar of November 23, 2004. No protests have been received.

Background

Southwest, a California Corporation is a public utility under the jurisdiction of this Commission. Southwest is primarily engaged in the business of distributing and selling natural gas in certain portions of San Bernardino, El Dorado, Placer and Nevada Counties, California.

Southwest is also engaged in the intrastate transmission, sale and distribution of natural gas as a public utility in certain portions of the states of Nevada and Arizona, and is a "natural gas company", within the meaning of the Natural Gas Act, subject to the jurisdiction of the Federal Energy Regulatory Commission with respect to interstate transmission facilities and sales of natural gas for resale on its northern Nevada system.

² Southwest's "Evergreening Authority" was initially granted by D.94-12-018, and extended by D.00-09-009 to September 2005. New issues under evergreening are not charged against Commission authorizations for "new money" securities.

Southwest's Current Financing Authorities

Southwest has previously issued debt and equity securities authorized by this Commission. The most recent financing authorizations are as follows:

<u>Decision (D.) No.</u>	<u>Authority/Type</u>	<u>Remaining Authority</u>
D.00-09-009 amended by D.00-09-053	\$136,000,000 Debt Securities \$80,000,000 Preferred Securities 4,234,800 shares of \$1 Common	zero \$80 million 4,234,800 shares
D.00-11-034	\$84,280,000 Debt Securities \$60,000,000 Preferred Securities 4,765,200 shares of \$1 Common	\$280,000 \$60 million 2,932,923 shares
D.00-11-035	\$250,000,000 Debt Securities \$50,000,000 Preferred Securities 3,000,000 shares of \$1 Common	zero zero zero
D.94-12-018 as extended by D.00-09-009	Evergreening Authority	Expiring September 2005
D.02-04-054 amended by D.02-04-072	\$550,000,000 Debt Securities	\$135 million

The authorization requested in the Application is in addition to the unused authority shown above. Southwest's external funding requirements will be discussed later under the Funds from Outside Sources section of this decision.

Issuance of Shares of Common Stock

Southwest proposes to issue and sell up to 4,000,000 shares of its \$1 par value common stock, from time to time through one or more public or

private offerings. Such sales may be (1) registered or exempt from registration under the Securities Act of 1933 and may be underwritten or made on a best-efforts or other basis, (2) through Southwest's previously approved dividend reinvestment/stock purchase and employee benefit plans³.

Southwest states in the Application that the precise number and timing of each offering and sale has yet to be determined and will be established with due regard to its financial condition, capital requirements, and the then prevailing and anticipated market conditions. The offering and sale of common stock through Southwest's Benefit Plans will also take into consideration the number of shares necessary to continue said plans. A general description of the stock issue is shown on pages 11 and 12 of the Application.

Issuance of Debt Securities

Southwest proposes to issue debt securities in an aggregate amount of up to \$415,000,000, in one or more of the forms outlined below. The precise amount and timing of each type of debt obligation; the market in, and the method by, which it will be issued; and the terms and provisions, price, and interest rate (which may be fixed, adjustable, variable or set by auction, remarketing, or other rate setting procedures) will be determined by Southwest, with due regard for its financial condition and requirements then prevailing, and anticipated market conditions, including competing demands for funds, existing at the time of sale.

³ Southwest's Dividend Reinvestment and Stock Purchase Plan, Employees Investment Plan (EIP), Management Incentive Plan (MIP), and 1996 Stock Incentive Plan (collectively referred to as the "Benefit Plans").

Debt securities may be issued directly as debentures, notes, bonds, loans, or other evidences of indebtedness which may include, without limitation, commercial paper programs, extendible commercial notes, bank loans, capital leases⁴, private placements with insurance companies or other lenders, bankers' acceptances, or other variable rate or fixed rate borrowing instruments which are or may become available in the capital markets. A general description of the debt securities is shown on pages 9 and 10 of the Application.

Debt securities may also be issued indirectly through one or more governmental agencies or quasi-governmental agencies (Agency) and loaned to Southwest. This type of financing will require Southwest, concurrently with the sale and issuance of such securities, to enter into a financing agreement, a loan agreement, a guarantee arrangement or other documents in instruments customary for such financing with the Agency regarding such securities. Southwest has previous authorizations for this type of financing: \$35.72 million proceeds were derived from the issuance of Industrial Development Revenue Bonds (IDRBs) in 2000 from the authority granted by D.00-11-034; \$75 million from the issuance of Clark County IDRBs; \$50 million of the City of Big Bear Lake IDRBs in 2000 under the authority granted by D.00-11-034; and \$165 million of Clark County IDRBs in 2002 per D.02-04-054.

Interest Rate Risk Management

Southwest requests authority to use interest-rate caps, floors, collars, swaps, hedges (treasury lock, cap, and collar) and other financial

⁴ Capital lease is a long-term, noncancelable financial lease. Title is transferred. Southwest does not anticipate any capital lease financing but has included it to provide flexibility if it is advantageous to utilize such financing.

instruments to manage the risks associated with interest rate volatility (collectively, “debt instruments”). Southwest also requests that these debt instruments not be counted against its authorized debt, since these debt instruments would not affect the amount of the underlying securities issued. In D.02-04-054, Southwest received Commission authorization for interest rate management transactions subject to conditions and limitations. A general description of the debt instruments is shown on pages 12 to 14 of the Application.

Discussion

Southwest’s request to issue shares of common stock, debt securities, and to enter into one or more contracts for the purpose of managing interest rate risk are subject to §§ 816 *et seq.*, which provide, in relevant part, as follows:

Section 816: The power of public utilities to issue [debt and common stock] is a special privilege, the right of supervision, regulation, restriction, and control of which is vested in the State, and such power shall be exercised as provided by law under such rules as the commission prescribes.

Section 817: A public utility may issue . . . [common stock], bonds, notes, and other evidence of indebtedness payable at periods of more than 12 months after the date thereof for any of the following purposes and no others:

- (a) Acquisition of property.
- (b) Construction, completion, extension, or improvement of its facilities.
- (c) Improvement or maintenance of its service.
- (d) Discharge or lawful refunding of its obligations...
- (g) Retirement of or in exchange for one or more outstanding stocks or stock certificates or other

evidence of interest or ownership of such public utility, or bonds, notes, or other evidence of indebtedness of such public utility, with or without the payment of cash.

Section 818: No public utility may issue [debt or common stock]...unless...it shall first have secured from the commission an order authorizing the issue, stating the amount thereof and the purposes to which the...proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in the order, and that...such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

The Commission has broad discretion under §§ 816 *et seq.*, to determine if a utility should be authorized to issue debt and common stock. The primary standard used by the Commission is whether a utility has demonstrated a reasonable need to issue debt and equity securities for proper purposes.⁵ Southwest's financial requirements will be addressed in the Financial Information Section that follows.

Competitive Bidding Rule

The Competitive Bidding Rule⁶ applies only to utilities with bond ratings of "A" or higher (Item 6 of Resolution No. F-616). Southwest's debt rating is "Baa2" as reported in the 2004 Moody's Bond Rating and "BBB-" in Standard & Poor's 2004 Bond Rating. Accordingly, Southwest is exempted from the Competitive Bidding Rule in connection with this authorization.

⁵ The term "proper purposes" means any expenditure that is necessary or proper to promote legitimate objects of a public utility of the type concerned. (207 Cal 630 (1929).)

⁶ Public utilities are required to invite publicly, written sealed bids for the purchase of their securities (with certain exceptions), and to sell their securities at the highest price obtainable.

Financial Information

For the twelve months ended June 30, 2004, Southwest reported total gas operating revenues at \$1,129,528,000, construction revenues at \$194,436,000 and net income of \$49,749,000. Southwest's California revenues were \$112,454,000 or 9.96% of total gas operating revenues.

A. Construction Budget

Southwest's forecasted construction expenditures for calendar years 2004 through 2006 are as follows:

(Thousands of Dollars)

<u>Components</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Gas Distribution Plant	\$209,323	\$209,496	\$170,816
Transmission Plant	9,063	20,478	8,454
General and Other Plant	<u>41,659</u>	<u>41,082</u>	<u>42,619</u>
Total	\$260,045	\$271,056	\$221,889

Southwest's forecasted construction budget for 2004 through 2006 totals \$752,990,000.

B. Cash Requirements Forecast

Southwest's Statement of Cash Requirements for 2004 through 2006
is as follows:

(Thousands of Dollars)

<u>Uses of Funds</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>Total</u>
Funds Used or Required for Construction Expenditures	\$260,045	\$271,056	\$221,889	\$752,990
Maturities/Refinancings:				
Redemption of Preferred Securities	-	-	-	-
Long-Term Debt	75,000	275,000	75,000	425,000
Short-term Debt at Beginning Of Year to be Refinanced	<u>52,000⁷</u>	<u>84,000</u>	<u>72,700</u>	<u>208,700</u>
Total	\$387,045	\$630,056	\$369,589	\$1,386,690
Less: Estimated Cash Avail- able from Internal Sources	<u>115,986</u>	<u>141,360</u>	<u>240,683</u>	<u>498,029</u>
Additional New Funds Required from Outside Sources	<u>\$271,059</u>	<u>\$488,696</u>	<u>\$128,906</u>	<u>\$888,661</u>

⁷ Actual beginning balance as of January 1, 2004 (Schedule II, Page 1 of 3, Forecasted Monthly Cash Flow and Short-Term Debt Balances for the 12 Months Ending December 31, 2004).

C. Funds from Outside Sources

Southwest proposes to secure the funding⁸ as follows:

	(Thousands of Dollars)			
<u>Source of Capital Funding</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>Total</u>
Estimated Proceeds from the Sale of Common Stock: MIP, Dividend Reinvest- ment & Stock Purchase Plan and EIP	\$ 47,059	\$ 40,996	\$ 40,906	\$128,961
Proceeds from Sale of Shares Of Preferred Securities	-	-	-	-
Proceeds from Draw down of Tax Exempt Bond Issues	-	-	-	-
Issuance of IDRBs	140,000	75,000	-	215,000
Issuance of Debentures/Term Facility & Medium Term Notes	-	300,000	50,000	350,000
Additional Cash Requirement/ (Surplus)	<u>84,000</u>	<u>72,700</u>	<u>38,000</u>	<u>194,700</u>
Total	<u>\$271,059</u>	<u>\$488,696</u>	<u>\$128,906</u>	<u>\$888,661</u>

Southwest's Statement of Cash Requirements indicates that it would require additional funds from external sources amounting to \$888,661,000 for 2004 through 2006. The requested authority in this Application for the issuance of \$415 million debt and an estimated \$96 million proceeds from the sale of 4,000,000 shares of common stock at \$24.00 per share are

⁸ For all years presented, there will be differences between the forecasted and actual results because events and circumstances frequently do not occur as expected, and those differences may be material. The exact timing and amount of future financing will depend on numerous internal and external factors.

necessary to help meet the forecasted cash requirements. In addition, Southwest will use certain existing unused debt and capital authorities to augment its financial requirements, as shown in the Capital Ratios section that follows.

D. Capital Ratios

Southwest's capital ratios as of June 30, 2004, are shown below as recorded and as adjusted to give pro forma effect to the transactions listed:

(Thousands of Dollars)

	<u>Recorded</u>		<u>Pro Forma⁹</u>		
	<u>Amount</u>	<u>Percent</u>	<u>Adjustments</u>	<u>Amount</u>	<u>Percent</u>
Common Equity	\$ 667,131	34.1	\$ 268,025 (a)	\$ 935,156	35.9
Preferred and Preference Equity	100,000	5.1	140,000 (b)	240,000	9.2
Long-Term Debt	1,132,744	58.0	300,000 (c)	1,432,744	54.9
Short-Term Debt	<u>54,000¹⁰</u>	<u>2.8</u>	<u>(54,000)</u>	<u>-</u>	<u>0.0</u>
Total	<u>\$1,953,875</u>	<u>100.0</u>	<u>\$ 654,025</u>	<u>\$2,607,900</u>	<u>100.0</u>

(a) 11,167,723 shares at an estimated average \$24.00/share which include the following:

- (1) 2,932,923 unused shares at an estimated \$24.00/share under the authority granted in D.00-11-034.
- (2) 4,234,800 unused shares at an estimated \$24.00/share under the authority granted in D.00-09-009, as amended by D.00-09-053.

⁹ Pro forma amounts assume all debt and equity financings requested in this filing are completed and all scheduled retirements of existing obligations are made during 2001-2003.

¹⁰ Forecasted ending balance as of June 30, 2004 (Schedule II, Page 1 of 3, Forecasted Monthly Cash Flow and Short-Term Debt Balances for the 12 Months Ending December 31, 2004).

- (3) 4,000,000 shares of authority at an estimated \$24.00/share as requested in this Application.
- (b) \$140 million of preferred securities as follows:
 - (1) \$60 million under the authority granted in D.00-11-034.
 - (2) \$80 million of preferred stock under the authority granted in D.00-09-009, as amended by D.00-09-053.
- (c) \$300 million of debt authority as follows:
 - (1) \$415 million of authority as requested in this Application.
 - (2) Less \$250 million of authority anticipated to be utilized in refinancing.
 - (3) \$135 million of existing debt authority granted in D.02-04-054, as amended by D.02-04-072.

Southwest's authorized capital structure (hypothetical) as shown in D.04-03-034 dated March 16, 2004, consists of 42% common equity, 5% preferred equity, and 53% long-term debt.

Capital structures are normally subject to review in cost of capital or general rate case proceedings. We will not, therefore, make a finding in this decision of the reasonableness of the projected capital ratios for ratemaking purposes.

Use of Proceeds

Southwest intends to apply the net proceeds to: (i) acquire property; (ii) construct, complete, extend, or improve its facilities; (iii) refund maturing debt and preferred securities; (iv) fund payments or redemption requirements of debt and preferred securities (including any premiums required in connection therewith); (v) retire (through defeasance or

otherwise), refinance, or exchange existing preferred securities and short- and long-term debt (including any premiums required in connection therewith; or (vi) reimburse its treasury for monies expended for expansion and betterment of its facilities.

The foregoing purposes are authorized by § 817 and, as required by § 818, are not reasonably chargeable to operating expenses or income.

Therefore, we will grant Southwest authority under §§ 816 *et seq.*, to issue 4,000,000 shares of common stock and \$415 million of long-term debt for the aforementioned purposes. To provide Southwest with financial flexibility, we will not prescribe how much of the authorized debt and issue of common stock must be allocated to each of the authorized purposes. Southwest may allocate the authorized debt and common stock among the authorized purposes, as Southwest deems necessary.

Our authorization is not to be construed as a finding of the value of Southwest's stock or properties nor as indicative of the amounts to be included in proceedings for the determination of just and reasonable rates. Consistent with § 824, Southwest shall maintain records to (1) identify the specific long-term debt and common stock issued pursuant to this order, and (2) demonstrate that the proceeds from such debt and common stock have been used only for the purposes authorized by this order.

Southwest shall not use any proceeds from the debt and equity securities pursuant to this order to begin construction of capital projects until Southwest has obtained the required approvals from the Commission, if any, including any required environmental review under the California Environmental Quality Act (CEQA).

Southwest has previously received Commission authority to enter into one or more interest rate transactions (most recently under

D.02-04-054 dated April 22, 2002, as amended).

We will require Southwest the same conditions imposed in D.02-04-054 under which interest rate risk management contracts and other derivative financial instruments may be used:

1. Southwest should provide the Energy Division and the Water Division's Audit and Compliance Branch¹¹ a report providing the following information concerning the amount of interest rate management contracts and other derivative financial instruments: date of execution, date of expiration, amount, counterparty, counterparty rating, nature of transaction, index used, and termination provisions.
2. Southwest should provide the Energy Division and the Water Division's Audit and Compliance Branch a copy of any agreement Southwest enters into in connection with the issuance of bonds.
3. Southwest should limit its exposure to any one counterparty as follows:

<u>Total Amount of Counterparty Risk</u>	<u>Maximum Exposure to One Party</u>
Less than \$100 million	100%
\$100-\$300 million	No more than 50%
Over \$300-\$500 million	No more than 33%
Greater than \$500 million	No more than 25%

¹¹ Reviews financing requests of all industries.

4. Southwest should limit its counterparty portfolio exposure as follows:

<u>Counterparty Rating</u>	<u>Limitation</u>
AAA	no limitation
AA	no limitation
A	no more than 60% of the total amount of counterparty exposure
BBB	no more than 30% of the total amount of counterparty exposure

(To be based on the lower rating, if applicable counterparty has a split rating.)

5. Southwest's variable rate exposure (unhedged variable rate debt and fixed to floating interest rate risk management contracts) should not exceed 35% of the total debt outstanding. Total debt outstanding includes all fixed rate and variable rate debt instruments issued by Southwest, but does not include any short-term financing (debt that will mature within one year of its date of issuance) issued by Southwest.
6. Southwest should separately report all interest income and expense arising from all interest rate transactions in all monthly and annual financial reports to the Commission.

Southwest is placed on notice by this decision that the Commission may review the reasonableness of the effective interest rates for swaps, interest rate cap, floor, or collar agreements issued by Southwest in conjunction with Southwest's general rate case or other ratemaking proceedings.

Short-Term Debt

Section 823(d) provides that no note payable at a period of not more than twelve months after the date of issuance of such note shall, in whole or in part, be refunded by any issue of stocks or stock certificates or other evidence of interest or ownership, or of bonds, notes of any term or character, or any other evidence of indebtedness, without the consent of the Commission.

Schedule IX to the Application shows recorded short-term debt of \$54 million that Southwest anticipates paying off.

For purposes of this Application, we will permit Southwest to refinance, refund, or replace short-term debt with the financing authority granted in this decision.

Evergreening Authority

Evergreening provides a utility pre-authorization to issue securities for the purpose of (1) refinancing securities at maturity, (2) upon mandatory redemption, (3) upon repurchase for mandatory sinking fund requirements, or (4) upon optional refinancing¹² to reduce financing costs, without corresponding new issue amounts being charged against Commission authorizations for “new money” securities. Evergreening is not intended to facilitate changes in a utility’s capital structure or in the nature of the underlying assets being financed, or to expand the permitted uses of proceeds. Debt may be replaced only with debt, preferred stock with preferred stock, and common stock with common stock.

¹² Issuance of securities for optional refinancing of securities shall be permitted under the evergreen authorization only if the average annual effective cost of the new securities over their life, including the impact of any refinancing premiums or discounts, is less than the average annual effective cost of the refinanced securities over their remaining life. If more than one series of securities is being issued or replaced, average annual effective cost shall be calculated on a weighted basis.

By this Application, Southwest requests that its “Evergreening Authority” be extended until December 31, 2009.

Pursuant to D.94-12-018, Southwest’s existing long-term debt totaling \$629,000,000 as of June 30, 1994 (its base date), has a weighted average maturity of 16.9 years. Schedule XI to the Application shows southwest’s long-term debt as of October 31, 2004 as \$1,190,000, 000 with a weighted average life of 15.32 years.

As of December 31, 2004, the majority of Southwest’s Evergreening Authority has been used to finance maturing debt instruments. Since 1994, Southwest has used \$600 million of Evergreening Authority. Of this amount, \$135 million has been used for optional refinancing.

In September 2003 Southwest optionally refinanced \$60 million of Trust Originated Preferred Securities. The savings from this transaction was reflected in Southwest’s 2005 California attrition filing.

In December 2004 Southwest optionally refinanced \$75 million of Clark County Nevada Industrial Development Revenue Bonds. The savings will benefit only the customers within the Southern Nevada jurisdiction (this debt is jurisdiction-specific pursuant to Internal Revenue Services’ restrictions).

Southwest anticipates that it will use the “Evergreening Authority” for certain amounts of its existing long-term debt of up to \$1,190,000,000, and preferred securities up to \$140,000,000 when permitted by the timing of the refinancing and to refinance existing long-term debt if favorable market conditions exist¹³.

¹³ Southwest anticipates evergreening \$150 million of maturing debts/refinancing.

Evergreen authority is intended to limit or eliminate the need for multiple Commission approvals when a public utility, having such authority, subsequently wants to issue debt securities, preferred stock, or common stock for the retirement of or in exchange for one or more outstanding stocks or stock certificates or other evidence of interest or ownership of such public utility, or bonds, notes, or other evidence of indebtedness of such public utility, with or without the payment of cash.

Once the Commission has authorized the issuance of securities, the issuing utility could redeem, repurchase, or roll over those securities at maturity, without further Commission action and without having to deduct the new issue amounts (including any redemption premiums) from the balance remaining under Commission authorizations.

There are no existing modifications, alterations, or limitations to the Evergreening Authority Guidelines authorized by D.93-12-022. The purposes for which the Guidelines were initially adopted, as delineated in the report submitted in A.93-05-008 and addressed by the Commission in D.93-12-022 remain today, and continue to support the justification to again authorize Southwest's use of the Guidelines as requested in the Application. Guideline (4) provides that any evergreen authorization shall have an initial term of no more than five years, unless suspended or extended by the Commission.

Southwest's request for evergreening authority is reasonable and is not contrary to the terms and conditions of the Guidelines. Having explicitly determined the sunset provision of five years, unless suspended or extended by the Commission as reasonable previously, we see no reason to object to Southwest's request for extending its evergreening

authority. Granting Southwest's request for an extension of time for its evergreening authority will provide the utility with greater timing flexibility to take advantage of low interest rates and market opportunities to refinance existing debt as well as to issue new debt securities when maturities occur. Secondly, without the availability of evergreen refinancing authority, Southwest's new financings would utilize new debt authority or require the filing of new debt applications.

We will therefore grant Southwest evergreening authority for long-term debt securities, preferred stock, and common stock subject to the Guidelines authorized by D.93-12-022 until December 31, 2009.

We remind Southwest of the following provisions in the Guidelines:

i. Guideline No. 8, Economic Optional Refinancing

Issuance of securities for optional refinancing of existing securities shall be permitted under the evergreen authorization only if the average annual effective cost of the new securities over their life, including the impact of any refinancing premiums or discounts, is less than the average annual effective cost of the refinanced securities over their remaining life. If more than one series of securities is being issued or replaced, average annual effective costs shall be calculated on a weighted basis (i.e., adjusted to reflect the respective aggregate principal amounts or par values of the different series of securities). This provision shall not apply to refinancing of securities upon maturity, mandatory redemption, or mandatory repurchase to fulfill sinking fund requirements. The grant of evergreen authorization does not constitute Commission pre-approval of the cost of money resulting from specific financing transactions, and the Commission retains the right to review the reasonableness of any such transactions in subsequent ratemaking proceedings.

ii. Guideline No. 9, Limited Changes to Average Maturity Due to Evergreen Refinancings

Each utility shall calculate the weighted average remaining life of all debt with a remaining life greater than 365 days and all non-perpetual preferred on the initial effective date of its evergreen authorization (the “base date” for average life calculations). Cumulative financings under the evergreen authorization shall be subject to the restriction that they may not result in an increase or decrease in this weighted average of more than three years (the six-year band). The weighted average maturity shall be calculated without reference to financings done outside the evergreen authorization. Each utility may request that the Commission change the base date for average life calculations and the six-year band; such a request may be included in a subsequent “new money” financing application or in a petition to modify its evergreen authorization.

Southwest shall also file with the Commission, on or before the 25th day of the month following each quarter, a statement for the preceding quarter showing all activity under the evergreen authorization. This statement shall be consolidated with its reports under General Order Series 24-B.

Fee

Southwest paid the fee of \$26,658 required by § 1904(b) when the Application was filed on November 18, 2004¹⁴. The calculation is shown in Schedule X to the Application. We found an error in Southwest’s Schedule X and the amount subject to the fee required by § 1904(b) should be

¹⁴ CPUC CSR#43375 dated 11/22/04.

\$23,505,600 instead of \$26,658,000. The correct California related financing amount is computed as follows:

Amount Requested:	
Debt Securities	\$415,000,000
Common Stock	96,000,000
Proceeds to be used for (where fee have been paid):	
Refinancing	(250,000,000)
Maturities	(25,000,000)
Net Total	<u>\$236,000,000</u>
California Revenues	9.96%
California Related	<u>\$ 23,505,600</u>

The fee for the California related financing authority as set forth by § 1904(b) is \$17,753¹⁵. We will direct the Fiscal Office to refund Southwest the amount of \$8,905.

Category and Need for Hearings

In Resolution ALJ 176-3143 dated December 2, 2004, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that an evidentiary hearing would not be necessary. Based on the record of this proceeding, we affirm that this is a ratesetting proceeding and that a hearing is not necessary.

Comments on the Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

¹⁵ The fee is determined as follows: $(\$2 \times 1,000,000/1,000)) + (\$1 \times (9,000,000/1,000) + (0.50 \times (13,505,600/1,000)) = \$17,753$.

Assignment of Proceeding

Kevin P. Coughlan is the assigned Examiner in this proceeding.

Findings of Fact

1. Southwest, a California corporation is a public utility subject to the jurisdiction of this Commission.
2. Southwest needs external funds for the purposes set forth in the Application.
3. The authority to issue debt and equity obligations are for proper purposes, not adverse to the public interest.
4. Authorizing Southwest to determine the precise amount and timing of each debt issue, the market in and method by which each debt issue is effected, and the price, interest rate, and other material provisions of each debt issue is not adverse to the public interest.
5. The use of interest rate risk management contracts, interest rate swap agreements, and other rate management agreements in appropriate circumstances is not adverse to the public interest. These features are tools that may improve the terms and conditions of debt issues and may lower overall cost of money for the benefit of ratepayers.
6. Southwest's California operating revenues are 9.96% of its total gas operating revenues.
7. The § 1904(b) fee (in proportion to Southwest's California operating revenues) is \$17,753 and not \$26,658.
8. Southwest made an overpayment of \$8,905 in the fee required by § 1904(b).
9. Guideline (4) of the Evergreening Guidelines states that any evergreen authorization shall have an initial term of no more than five years, unless suspended or extended by the Commission.

10. The Commission reserves the right to make a full assessment and measurement of evergreening at a future date.

11. The reasonableness of any resulting interest rate and cost of money arising from debt capital is normally subject to review in cost of capital or general rate case proceedings.

12. The Commission does not by this decision determine that Southwest's construction budget, cash requirements forecast, and capital ratios presented herein are necessary or reasonable for ratemaking purposes. These issues are normally tested in general rate case or cost of capital proceedings.

Conclusions of Law

1. This is a ratesetting proceeding.
2. A public hearing is not necessary.
3. The authorized financing transactions are for lawful purposes and the money, property, or labor to be obtained is required for these purposes. The proceeds may not be charged to operating expenses or income.
4. Section 817(d) provides that debt issues may be used for the discharge or lawful refunding of obligations.
5. Section 818 requires Commission authorization for the issue of stocks, bonds, notes, or other evidences of indebtedness payable at periods of more than 12 months.
6. Section 823(d) provides that no note payable at a period of not more than 12 months after the date of issuance of such note shall be refunded, in whole or in part, by any issue of stocks or stock certificates or other evidence of interest or ownership, or of bonds, notes of any term or

character, or any other evidence of indebtedness, without the consent of the Commission.

7. Southwest should not use the proceeds from the debt and equity securities authorized by this order to fund capital projects until Southwest has obtained any required Commission approvals for the projects, including any required environmental review under CEQA.

8. Southwest's request for "evergreen authority" should be authorized, subject to the Guidelines in D.93-12-022.

9. The Competitive Bidding Rule applies only to utilities with bond ratings of "A" or higher.

10. This authorization is not a finding of the value of Southwest's stock or property, nor does it indicate approval of matters subject to review in ratemaking proceedings.

11. The money, property, and labor to be procured by Southwest with the proceeds of the debt and equity securities authorized by this decision are reasonably required for the purposes specified in this Decision, and such purposes are not reasonably chargeable to operating expenses or income.

12. Southwest should be refunded the amount of \$8,905 for the overpayment of the fee required by § 1904(b).

13. Notice of the filing of the Application appeared on the Commission's Daily Calendar of November 23, 2004. There is no known opposition to this Application, and the authority requested should be granted subject to the conditions set forth in this order.

14. The following Order should be effective immediately so that Southwest may issue as soon as possible the debt and equity securities authorized herein.

O R D E R**IT IS ORDERED** that:

1. The authority requested in Application (A.) 04-11-020 (Application) and described in the following Ordering Paragraphs is granted pursuant to Pub. Util. Code §§ 816 through 830.
2. Southwest Gas Corporation (Southwest) is authorized to obtain debt capital in an aggregate amount not to exceed \$415,000,000 through the direct issuance of one or more types of indebtedness, including, without limitation, debentures, bonds, notes, bank loans, capital leases, private placement, commercial paper programs, extendible commercial notes, bankers' acceptances, and other variable-rate instruments which are or may become available in the capital markets or indirectly through one or more governmental agencies, as identified in A.04-11-020.
3. Southwest may determine the precise amount and timing of each debt financing, the market in, and method by which each is issued, the principal amounts and maturities and, if any, the terms of redemption, repurchase security, other security, subordination and conversion provisions, rights, warrants, and the other terms and provisions and the price and interest rate (which may be fixed, adjustable, variable, or set by auction, remarketing, or other rate setting procedures) of the borrowings and of any securities related thereto or issuable in connection therewith in the manner set forth in the Application.
4. Southwest may enter into interest-rate caps, collars, swaps, hedges, and other financial instruments to manage interest rate risks subject to the conditions appearing on pages 15 and 16 of this decision.

5. Southwest may issue and sell up to 4,000,000 shares of its \$1 par value common stock, in addition to its existing authority, by public or private offering, or through its Benefit Plans.

6. Southwest may refinance existing long-term debt described in the Application by the issuance and sale of debt or equity securities authorized in this order.

7. Southwest may refinance, refund, or replace short-term debt with the proceeds of the debt or equity securities authorized in this order.

8. Southwest may evergreen long-term debt securities, preferred stock, and common stock subject to The Guidelines for Energy Utilities: Terms and Conditions for Evergreening Authority, authorized by Decision 93-12-022 through December 31, 2009.

9. Southwest shall provide the Energy Division and the Water Division's Audit and Compliance Branch a report providing the following information concerning the amount of interest rate management contracts and other derivative financial instruments: date of execution, date of expiration, amount, counterparty, counterparty rating, nature of transaction, index used, and termination provisions.

10. Pursuant to § 824 and General Order No. Series 24-B (GO 24-B), Southwest shall maintain records that (i) identify the specific short-term debt, long-term debt, and common stock issued pursuant to this decision, and (ii) demonstrate that the proceeds from the debt and equity securities issued pursuant to this decision have been used only for the purposes authorized by this decision.

11. On or before the 25th day of the month following each quarter, Southwest shall file the reports required by GO 24-B, including activities under the evergreen authorization.

12. Southwest shall comply with all applicable environmental laws and regulations when planning and implementing any capital expenditure programs that are financed, in whole or in part, with the proceeds from the debt and equity securities authorized by this decision.

13. The Fiscal Office shall send Southwest a check in the amount of \$8,905, representing overpayment of fee required by 1904(b) for A.04-11-020 (with CSR # 43375 dated November 22, 2004 and the decision number for this proceeding as reference).

14. The authority granted herein shall be effective until the financing authorization is fully utilized.

15. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.